

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT
OF ALABAMA, NORTHERN DIVISION**

Deloise Price,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO. 2: 06 cv721-MHT
)	
Wal-Mart Stores, Inc.,)	
Extreme Performance, Inc.,)	
)	
Defendants.)	

PLAINTIFF'S REQUESTED JURY CHARGES

Plaintiff respectfully requests that this Court give the following charges to the jury.

Respectfully Submitted,

/s/ Brian Strength
Brian P. Strength (STR052)
Attorney for Plaintiff

OF COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing pleading through the ECMF system on the 12th day of November, 2007.

Dennis R. Bailey
Rushton, Stakely, Johnston & Garrett, PA
184 Commerce Street
Post Office Box 270
Montgomery, Alabama 36101-0270

/s/ Brian Strength
Of Counsel

APJI 11.00 Damages – Introduction

Ladies and gentlemen of the jury, the court will now instruct you on the law of damages. The burden is on the plaintiff to reasonably satisfy you from the evidence of the truthfulness of her claims. If after consideration of all the evidence in this case, you are not reasonably satisfied of the truthfulness of the plaintiff's claim, your verdict should be for the defendants. In this event, you would go no further. This would end your deliberations. On the other hand, if, after a consideration of all the evidence in the case, you are reasonably satisfied of the truthfulness of the plaintiff's claims, your verdict should be for the plaintiff. In this event, it will be necessary for you to arrive at an amount to be awarded from the verdict from which I will read to you and describe later in my charge. I now give you the following rules of law to assist you in your deliberations in arriving at an amount in the event you find for the plaintiff. Plaintiff has four claims, and through these claims, they seek compensatory and punitive damages.

GIVEN _____

REFUSED _____

APJI 11.01 Damages – General

Compensatory or actual damages are allowed and should be awarded where the plaintiff reasonably satisfies the jury from the evidence that the plaintiff has been injured or damaged as a proximate result of the defendants' actions.

Punitive or exemplary damages are allowed to the plaintiff and may be awarded in the sound discretion of the jury in cases where the plaintiff proves by clear and convincing evidence that the defendants consciously or deliberately engaged in oppression, fraud, wantonness, or malice with regard to them.

GIVEN _____

REFUSED _____

APJI 11.02 Damages – Compensatory

The purpose of awarding compensatory damages is to fairly and reasonably compensate the injured party for the loss or injury sustained. Compensatory damages are intended as money compensation to the parties wronged, to compensate them for their injury and other damages which have been inflicted upon them as a proximate result of the wrong complained of.

GIVEN _____

REFUSED _____

APJI 11.03 Damages – Punitive

The purpose of punitive or exemplary damages is to allow money recovery to the plaintiff by way of punishment to the defendants, and for the added purpose of protecting the public by deterring the defendants or others from doing such wrong in the future. The imposition of punitive damages is entirely discretionary with the jury. Should you award punitive damages, in fixing the amount, you must take into consideration the character and degree of the wrong as shown by the evidence in the case, and the necessity of preventing similar wrongs.

For the plaintiff to be entitled to recover punitive damages, you must first award compensatory damages or nominal damages. Further, the plaintiff must prove by clear and convincing evidence that the defendants consciously or deliberately engaged in oppression, fraud, wantonness, or malice with regard to them.

Clear and convincing evidence is evidence that, when weighed against evidence in opposition, will produce in the minds of the jury a firm conviction and a high probability as to the correctness of their conclusion. Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence or a substantial weight of the evidence, but less than beyond a reasonable doubt.

Malice means the intentional doing of a wrongful act without just cause or excuse, either:

1. With an intent to injure the person, or property of another person or entity, or
2. Under such circumstances that the law will imply an evil intent.

GIVEN _____

REFUSED _____

APJI 11.04 Personal Injury - Elements

The plaintiff claims compensation for the following items or elements of damages:

Medical expenses;

physical pain and suffering; and

mental anguish.

GIVEN _____

REFUSED _____

APJI 28.00 NEGLIGENCE- DEFINITION

Negligence is the failure to discharge or perform a legal duty owed to the other party.

GIVEN _____

REFUSED _____

APJI 28.01 Negligence and Ordinary Care

Negligence means the failure to exercise reasonable care; that is, such care as a reasonably prudent person would have exercised under the same or similar circumstances.

There, “negligence” is the failure to do what a reasonably prudent person would have done under the same or similar circumstances, or, the doing of something which a reasonably prudent person would not have done under the same or similar circumstances.

GIVEN _____

REFUSED _____

APJI 29.00 Wantonness – Definition

Wantonness is the conscious doing of some act or omission of some duty under knowledge of existing conditions and conscious that from the doing of such act or omission of such duty an injury will likely or probably result. Before a party can be said to be guilty of wanton conduct it must be shown that with reckless indifference to the consequences he either consciously and intentionally did some wrongful act or consciously omitted some known duty which produced the injury.

GIVEN _____

REFUSED _____

Apji 32.02 Suit for Personal Injury Based on Breach of an Implied Warranty of

Merchantability

Plaintiff must reasonably satisfy you from the evidence that the following material allegations combined and concurred to produce personal injury to the plaintiff:

1. That the defendant was a merchant or seller with respect to goods of the same kind as the product or article in the question, in this case, the exercise bicycle;
2. That the defendant sold the product or article in question;
3. That the product or article in question was used for the ordinary purposes for which such products are used;
4. That the product or article in question was defective, or unmerchantable, i.e., not fit for the ordinary purposes for which such products are used;
5. That the defect or defects in the product or article proximately caused injury to the plaintiff;
6. That the plaintiff gave notice to defendant within a reasonable time after she discovered the alleged breach of warranty.

GIVEN _____

REFUSED _____